



# SOCIAL SECURITY

Office of the Commissioner

December 16, 1997

*Handwritten:* CAG 10/16/97

The Honorable John D. Hawke  
Under Secretary for Domestic Finance  
Department of the Treasury  
Washington, D.C. 20220

Dear Mr. Hawke:

I am pleased to offer the Social Security Administration's (SSA) comments on the Department of the Treasury's (Treasury) proposed rules to implement the final phase of the mandatory electronic funds transfer (EFT) legislation enacted by section 31001(x) of the Debt Collection Improvement Act of 1996. The proposed regulation articulates a well-balanced strategy in that it encourages Federal benefit recipients to make use of EFT while, at the same time, it recognizes that many current check receivers may have valid hardships which require waivers from EFT.

In addition to the comments included in the enclosed material, I would like to mention the following strategic issues which are of interest to SSA.

Our primary concern with the proposed rule is the potential burden it places on both the public and SSA by requiring a written certification from check receivers who either do not have bank accounts or those who otherwise want to self-certify hardship exemptions to the EFT mandate. This requirement will likely result in some form of special contact (i.e., apart from receiving the account information needed to establish direct deposit) with our current remaining check receivers. SSA estimates that between 7 and 8 million of these individuals do not have bank accounts. Because the Government may not be able to offer special EFT accounts by the prescribed January 2, 1999 deadline, each of these individuals would have to be contacted again at a later date.

To best address these circumstances, I suggest scheduling the implementation of the final phase of the EFT mandate to coincide with the availability of Treasury's "electronic transfer account" (ETA) program for unbanked Federal recipients or those recipients who prefer to use the ETA program. This would be the most feasible approach because it would impose a lesser burden on both the public and SSA.

SOCIAL SECURITY ADMINISTRATION WASHINGTON DC 20254

*Handwritten:* EFT #154

Under Section III G. of the Supplementary Information portion of the proposed rules, program agencies are advised to "... take action as early as possible in 1998 to inform recipients who still receive checks of the requirement to convert to EFT. Collection of the required information should begin no later than July 1, 1998 . . . ." At the same time, Section III D. states that Treasury's program for the unbanked may not be available by January 2, 1999 and, accordingly, proposes an automatic waiver until the earlier of either January 2, 2000 or a date by which the Secretary of the Treasury certifies that the special ETA program will be available.

Without the national ETA program, SSA is placed in the difficult position of having to impart a message regarding the EFT mandate without being able to provide any specific information on what is expected of the significant number of individuals without bank accounts. By practical illustration, SSA would be required to send notices to approximately 16 million remaining check receivers (as of the stated mid-1998 deadline). Of these, between 7 and 8 million recipients are unbanked. These individuals would have to complete a form, return it to SSA for administrative processing and wait for further instructions. This arrangement would also require SSA to generate a second series of mailings some months later when the ETA program does become available.

SSA suggests that it be required to release only one series of notices to all remaining check receivers. Assuming the ETA program is available by mid-1999, notices would be mailed to an estimated 12 million beneficiaries. Everyone receiving a notice would be provided with complete information, including guidelines on what is expected, complete information on the ETA program, a description of the waiver requirements, etc. Prior to this, SSA would undertake a vigorous (but generic) public education campaign to convince check receivers of the distinct advantages of EFT. This approach would reduce the overall public reporting impact by an estimated 300-to-500 burden years and minimize the resource impact on SSA.

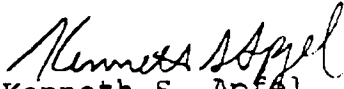
If you agree with our suggestion, I ask that the final rule be modified to allow program agencies to automatically waive the EFT requirement for all remaining check receivers paid until the special accounts described in Section §208.4(b) become available. Such exceptions could be granted in response to plans agencies submit for approval to the Secretary of the Treasury.

SSA recognizes that Treasury has received comments from numerous community-based organizations asking that the waiver categories be expanded to include literacy, limited proficiency in English,

mental impairment, etc. The Agency would support a change to the final rule that expands the conditions under which waivers may be granted to unbanked recipients.

SSA's technical comments are included in the enclosed material. Questions members of your staff may have regarding our comments may be directed to Mr. Michael Johnson at (410) 965-2863.

Sincerely,

  
Kenneth S. Apfel  
Commissioner  
of Social Security

Enclosure

Comments of the Social Security Administration  
on the Department of the Treasury's  
Notice of Proposed Rulemaking  
Title 31, Code of Federal Regulations, Part 208  
"MANDATORY ELECTRONIC FUNDS TRANSFER"

GENERAL

Generally, the proposed regulation articulates a well-balanced strategy in that it encourages Federal benefit recipients to make use of the distinct advantages of electronic funds transfer (EFT) technology while, at the same time, recognizes that many current check receivers may have valid issues which require the Government to grant waivers and continue some payments by check.

The Social Security Administration (SSA) offers the following comments in response to the Department of the Treasury's (Treasury) notice of proposed rulemaking revising Title 31, Code of Federal Regulations, Part 208:

Supplementary Information:

I. Background

A. Introduction

- o The fourth paragraph states the objective of Section 3100(x) of the Act which is ". . . to bring into the mainstream of the financial system those millions of Americans who receive Federal payments and who currently do not use the financial system to receive funds." This objective is well stated and should be used extensively in the Government's public education materials.
- o Reference is made to Treasury's plans to amend its regulation, Title 31, Part 210, which addresses the Federal Government's use of the national automated clearinghouse system. SSA welcomes this news and looks forwards to receiving the changes as soon as possible.

### III. Section-by-Section Analysis

#### B. Section 208.2--Definitions

##### Section 208.2(b)--Authorized Payment Agent

SSA concurs with the term "authorized payment agent" as currently defined in the proposed rule. Treasury may want to consider modifying the term, however, to allow the Secretary (or agencies) to approve in the future the inclusion of other entities as authorized payment agents if/when conditions warrant. For example, the Government may want to consider a special ETA program operated through local post offices if a suitable program cannot be developed within the financial community.

#### D. Section 208.4--Waivers

- o SSA is concerned with the proposed rule because of the burden it places on both the public and the Agency by requiring written certification from check receivers who either do not have bank accounts or those who otherwise want to self-certify hardship exemptions to the EFT requirement. This will likely result in some form of special contact (i.e., apart from receiving the account information needed to establish direct deposit) with an estimated 9-to-12 million of the Agency's current 18 million remaining check receivers. Between 7 and 8 million of these individuals are expected to certify that they do not have bank accounts. Because the Government may not be able to offer special EFT accounts by the prescribed January 2, 1999 deadline, each of these individuals would have to be contacted again at a later date. Between 2 and 4 million banked check receivers are expected to contact SSA to self-certify a hardship waiver depending on the final waiver criteria. Finally, an estimated 0.5 million to 1.5 million check receivers are expected not to respond at all to Government solicitations by the January 1999 deadline. If the special EFT account is not available by that time, SSA must assume the nonresponders are unbanked and arrange to contact them again at a later date.
- o To best address all of these circumstances, implementation of the final phase of the EFT mandate should be scheduled to coincide with the availability of Treasury's ETA program for unbanked Federal recipients. This would be the most feasible approach because it would impose a lesser burden on both the public and SSA.

- o Under Section III. G. of the Supplementary Information portion of the proposed regulations, program agencies are advised to ". . . take action as early as possible in 1998 to inform recipients who still received checks of the requirement to convert to EFT. Collection of the required information should begin no later than July 1, 1998 . . . ." At the same time, Section III. D. states that Treasury's program for the unbanked may not be available by January 2, 1999 and, accordingly, proposes an automatic waiver until the earlier of either January 2, 2000 or a date by which the Secretary of the Treasury certifies that the special ETA program will be available.
- o Without a national program for unbanked recipients, SSA is placed in an almost untenable position of having to impart a message regarding the EFT mandate without being able to provide any specific information on what is expected of the significant number of individuals without bank accounts. As a practical illustration, SSA would be required to send notices to approximately 16 million remaining check receivers (as of the stated mid-1998 deadline). Of these, between 7 and 8 million recipients are unbanked. These individuals would have to complete a form, return it to SSA for administrative processing and wait for further instructions. This arrangement would also require SSA to generate a second series of mailings some months later when the ETA program does become available.
- o If SSA were allowed to plan its implementation activities around the availability of the ETA program, only one series of notices would be sent to all remaining check receivers. Assuming the ETA program is available by mid-1999, notices would be mailed to an estimated 12 million beneficiaries. Everyone receiving a notice would be provided with complete information on the ETA program, including guidelines on what is expected, a description of the waiver requirements, etc. Prior to this, SSA would undertake a vigorous (but generic) public education campaign to convince check receivers of the distinct advantages of EFT. This approach would reduce the overall public reporting impact by an estimated 300-to-500 burden years and minimize the resource impact on SSA.
- o The final rule should be modified to allow program agencies to automatically waive the EFT requirement for all remaining check receivers until the special accounts described in Section §208.4(b) become

available. Such authority could be contingent upon agencies submitting for approval implementation plans to the Secretary of the Treasury.

- o SSA has concerns related to the proposed restrictions on waivers for those banked Federal recipients who filed for benefits after July 25, 1996. Because waivers are available based on a stated **condition** (i.e., geographic barrier or physical limitation), the condition must be the deciding factor, not the point in time the individual applied for benefits. This Agency would be placed in an untenable position if it could not grant a waiver to someone who filed for benefits after July 25, 1996 and whose condition changed dramatically after his/her entitlement began while granting a waiver for exactly the same condition to someone else whose entitlement began prior to July 26, 1996.
- o This Agency concurs with those who stressed the importance of financial institutions (FI) passing remittance data on to vendors. Remittance advice information is as important to the vendor as the payment.
- o The proposed rule does not adequately address the problem associated with the fact that less than 10 percent of the financial community is currently capable of participating in electronic data interchange with vendors. The final rule must provide some sort of definitive response to this issue. Either the Government confirms the requirement that all administrative payments must be made electronically by the stated deadline and include the steps it expects the vendor community to take to comply with this requirement, or the final rule must include specific waiver conditions applicable to the vendor community. The final rule cannot leave this issue unresolved.

E. Section 208.5--Access to Account Provided by Treasury

SSA agrees with Treasury's proposed plan to engage one or more Federally-insured FIs to act as financial agent for providing consumer accounts to unbanked recipients. Further, this Agency is aware of the wide range of comments Treasury is likely to receive on the characteristics of the ETA account.

Treasury must balance the need for low-cost accounts with competing pressures for prescribed numbers of "free" services. SSA recommends soliciting limited ETA services from the financial community that conform to a tiered price schedule.

By way of example, a "basic" ETA account might be provided for the lowest possible monthly maintenance fee. It may provide only one free withdrawal from an automated teller machine (ATM) and unlimited point-of-service (POS) withdrawals.

An "intermediate" ETA account may be offered for a monthly maintenance fee which is higher than the basic account fee. With the intermediate account, however, the beneficiary would be entitled to several free withdrawals from an ATM, some number of free money orders per month and unlimited POS access.

A "high-end" ETA account could offer services comparable to a basic bank account for comparable fees.

A tiered approach allows the 10 million unbanked recipients cited by Treasury the ability to choose an ETA account that meets their needs for an agreed upon monthly fee.

Other desirable characteristics include dependability of the system and availability of the delivery network, support offered in helping unbanked recipients establish an account, ongoing support to account users, the willingness of the provider to work with agencies to receive enrollment information electronically, etc.

F. Section 208.6--Account Requirements

SSA concurs with the conditions set forth in this section.

G. Section 208.7--Agency Responsibilities

As stated previously, agencies must implement the EFT mandate following the most feasible course of action. SSA would establish the availability of the ETA account as the key date for meeting the all-electronic payment objective. Automatic waivers should be available to all remaining check receivers until the ETA program becomes available.



#### IV. Special Analysis

As written, the proposed rule would require all Federal agencies to seek separate approvals from the Office of Management and Budget (OMB) for forms certifying that Federal recipients are either unbanked or otherwise meet one of the established waiver conditions. SSA believes the most feasible means of addressing this requirement is for Treasury to obtain a blanket approval from OMB on behalf of all 26 Federal agencies rather than each agency being required to seek approval separately.

#### PART 208--MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

##### § 208.2(b)

Treasury may add language to this section allowing the Secretary to designate additional entities as authorized payment agents in the future if/when conditions warrant. For example, the Government may want to consider distributing funds through a special arrangement with the postal service if a suitable program cannot be developed through the financial community.

##### § 208.4

This section should be amended to allow implementation of the EFT mandate for Social Security and Supplemental Security Income check receivers (banked and unbanked) effective with the availability of Treasury's ETA program as stated on pages 2 through 4 of these comments.

##### § 208.4(a)

This section should be amended by eliminating the reference to the July 26, 1996 entitlement date. As stated previously in our comments on Section 208.4--Waivers, SSA believes the condition causing the hardship should be the determining factor, not the date the individual became entitled to Federal payments.

##### § 208.5

No guidance was provided agencies in the proposed rule with regard to the actions to be taken when check receivers fail to respond to the notice regarding the EFT mandate. SSA and other agencies will encounter situations in which check receivers fail to provide either the requested account information needed to pay by direct deposit or apply for a waiver by the designated sunset date.

To address these situations, Treasury should expand this section to direct agencies to either suspend further payments or take action to automatically enroll the individual in the ETA program. SSA favors the latter approach with the provision that the ETA provider identify all such accounts and subsequently report the lack of withdrawals from the account over the initial 60 or 90 day period. ETA accounts from which no withdrawals are made would cause agencies to suspend further benefits.

§ 208.9(b)

This section should be expanded to clearly state that check issuances which continue because a waiver was granted shall not cause a charge to be assessed against the certifying agency.